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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,854	01/16/2004	Sreenivas Addagatla	042933/271712	6954

826 7590 11/10/2009

ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

EXAMINER	
WHIPPLE, BRIAN P	

ART UNIT	PAPER NUMBER
2452	

MAIL DATE	DELIVERY MODE
11/10/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/758,854	ADDAGATLA ET AL.	
	Examiner	Art Unit	
	BRIAN P. WHIPPLE	2452	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 November 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-7,12,16-22,26 and 27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-7,12,16-22,26 and 27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1, 4-7, 12, 16-22, and 26-27 are pending in this application and presented for examination.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/2/09 has been entered.

Response to Arguments

3. Applicant's arguments filed 11/2/09 have been fully considered but they are not persuasive.

4. Applicant argues a throttle value limiting the first data transfer rate to a value "less than or equal to the least one of the first, second, and third data transfer rates" is not disclosed by Hsu. The Examiner respectfully disagrees. As, Hsu, discloses a scenario in which the network load is monitored in order to throttle the data to the lowest network rate of 10

Mbps at appropriate times (Col. 4, ln. 63 – Col. 5, ln. 11, this section generally discloses the throttling process; Col. 6, ln. 17-20, "the link speed is further lowered to 10 Mbps). In this situation, the transfer rate has been throttled to a speed that is equal to the lowest speed of the network interface cards (i.e., 10 Mbps).

5. Applicant argues Hsu fails to disclose at least two of the first, second, and third data transfer rates are different from one another." The Examiner respectfully disagrees. The scenario in which all three could be equal to 1 Gbps was simply one possible scenario used for example in the advisory action. The first scenario (as discussed in paragraph 4 above) also holds true and in this scenario at least two of the values are different from one another. Namely, the first and second data transfer rates of the local and far-end NICs are capable of several speeds and the network itself is capable at a third data transfer rate, such as 1 Gbps (Col. 3, ln. 43-50; Col. 4, ln. 56 - Col. 5, ln. 11). Thus, as discussed above, the first and second data transfer rates could be throttled to 10 Mbps even when the network is capable of more (the third data transfer rate), but is currently operating below a threshold value for average load (Col. 6, ln. 17-20).

6. Applicant argues that Hsu fails to disclose obtaining the transfer data rate of a network between the first and second hosts during a communication start-up process from a

signaling message. The Examiner respectfully disagrees. All three data transfer rates are known to the local NIC, remote NIC, and the intermediate network equipment. Hsu further discloses that the link speeds are obtained through the negotiation (communication start-up) process (Fig. 5, item 506 and Col. 1, ln. 40-45). This interpretation is consistent with what was well known in the art at the time of Applicant's invention; to not be aware of the three data transfer rates during autonegotiation (a communication start-up process) of the highest common linking speed would render effective networking communication impossible.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 4, 16, 19, 22, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Hsu et al. (Hsu), U.S. Patent No. 7,127,521 B2.

9. As to claim 1, Hsu discloses a first host configured to provide for transmission of multiplexed data at a first data transfer rate (Col. 3, ln. 43-50);

a second host capable of receiving multiplexed data at a second data transfer rate (Col. 4, ln. 56-63);

a network through which data is transferred from the first host to the second host having a third data transfer rate (Col. 4, ln. 59-63); and

a data throttle, wherein the data throttle limits the first data transfer rate to a throttle value that is less than or equal to the least one of the first data transfer rate, the second data transfer rate, and the third data transfer rate, and wherein the first, second, and third data transfer rates are obtained during a communication start-up process from a signaling message, and wherein at least two of the first, second, and third data transfer rates are different from one another (Fig. 5, item 506 and Col. 1, ln. 40-45; Col. 3, ln. 43-50; Col. 4, ln. 56 – Col. 5, ln. 11; Col. 6, ln. 17-20).

10. As to claims 4, 16, 19, 22, and 26, the claims are rejected for reasons similar to claim 1 above.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu as applied to claim 1 above, in view of what was well known in the art.

13. As to claim 12, Hsu discloses the invention substantially as in parent claim 1, but does not explicitly disclose SIP.

Official Notice (See MPEP 2144.03) is taken that Session Initiation Protocol (SIP) was a well-known protocol for creating sessions.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Hsu by using SIP as was well known in the art at the time of the invention for the purposes of using a standard protocol to create sessions in a networking environment.

14. Claims 5-7, 17-18, 20-21, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu as applied to claims 1, 16, 19, and 26 above, in view of Bach et al. (Bach), U.S. Patent No. 5,619,650.

15. As to claim 5, Hsu discloses the invention substantially as in parent claim 1 above, but is silent on an applications layer, a sockets layer, a transport layer, and a network layer.

However, Bach discloses an applications layer, a sockets layer, a transport layer, and a network layer (Fig. 1; Abstract, ln. 4-7).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Hsu by explicitly disclosing the OSI model as this is a well known standard means for communication among multiple devices (Bach: Col. 1, ln. 53-61). Additionally, it is well known to establish a sockets layer by distributing API through the session layer (Bach: Abstract, ln. 4-7) for the purposes of establishing communication across applications on different systems (Bach: Col. 2, ln. 58-61).

16. As to claim 6, the claim is rejected for the same reasons as claims 1 and 5 above.

17. As to claim 7, Hsu and Bach disclose the invention substantially as in parent claim 5, including the transport layer is comprised of a User Datagram Protocol (UDP) and the network layer is comprised of an Internet Protocol (IP) (Bach: Col. 2, ln. 43-48).

18. As to claims 17, 20, and 27, the claims are rejected for similar reasons to claim 6 above.

19. As to claims 18 and 21, the claims are rejected for similar reasons to claim 7 above.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the Notice of References Cited (PTO-892).

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN P. WHIPPLE whose telephone number is (571)270-1244. The examiner can normally be reached on Mon-Fri (11:30 AM to 6:00 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thu Nguyen can be reached on 571-272-6967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian P. Whipple
/B. P. W./
Examiner, Art Unit 2452
11/4/09

/THU NGUYEN/
Supervisory Patent Examiner, Art Unit 2452